

Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **201124019**

Release Date: 6/17/2011

CC:PA:BR7

POSTN-151993-10

UILC: 7602.03-00

date: December 30, 2010

to: Steven M. Webster, Attorney
Greensboro CC:SB:2:GBO

from: Charles B. Christopher, Chief, Br. 7
CC:PA:Br7

subject: Cable Communications Policy Act and Collection Summonses

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Taxpayer:

Cable Company:

ISSUES

1. Does the description of records set forth in the summons served on the Cable Company request the production of personally identifiable information within the meaning of the Cable Communications Policy Act of 1984 (CCPA), 47 U.S.C. §§ 551 *et seq.*, when the description lists copies of the Taxpayer's billing and account statements, copies of his records of payment by check or direct account debit, and copies of his service application and deposit record.

2. Does the exception codified in 18 U.S.C. § 2703(c)(2) of the Stored Wire and Electronic Communications and Transactional Records Access statute permit the Service to obtain any of the summoned information if the Cable Company provides internet or telephone service to the Taxpayer.

CONCLUSIONS

All of the records sought by the summons constitute personally identifiable information within the meaning of the CCPA. However, if the Cable Company also provides internet or telephone service to the Taxpayer, the Service can summon the records showing the source of the Taxpayer's payments pursuant to 18 U.S.C. § 2703(c)(2).

FACTS

The Service served a third-party collection summons on the Cable Company to obtain information that might identify the bank account or other source from which the Taxpayer made monthly payments. The summons required the Cable Company to produce copies of the Taxpayer's checks or records of his direct debit payments for the prior three months, copies of the taxpayer's credit or service application, records of his deposit, and copies of the Cable Company's most recent billing statement showing the Taxpayer's account contact information. This information was sought with respect to a particular account number as well as "any and all accounts belonging to or associated with" the taxpayer. The Cable Company declined to comply with the summons, stating it was precluded by the CCPA from producing personally identifiable information. You have asked whether the information described in the summons constitutes personally identifiable information within the meaning of the CCPA and whether the cable company is, in fact, barred from complying with the Service's summons. The summoned Cable Company provides telephone and internet service.

LAW AND ANALYSIS**1. Definition of Personally Identifiable Information**

The CCPA protects cable subscribers' privacy by limiting the disclosure of personally identifiable information about subscribers without their prior written consent. With certain exceptions, 47 U.S.C. § 551(c)(1) provides the general prohibition. In pertinent part, it states:

(c) Disclosure of personally identifiable information

- (1) [A] cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

The statute does not define personally identifiable information; it merely provides that the term does not include any record of aggregate data which does not identify particular persons. 47 U.S.C § 551(a)(2)(A). However, the plain meaning of the term and interpretative case law lead to the conclusion that personally identifiable information is any information collected by a cable company that identifies a particular person,

notwithstanding how the information was collected.¹ See *Scofield v. Telecable of Overland Park, Inc.* 973 F.2d 874 (10th Cir. 1992) (The court expressly held that personally identifiable information is not limited to information collected through the cable system; impliedly reasoning that it includes information that the subscriber has furnished and that the cable company maintains in the ordinary course of business); *United States v. Cox Cable Communications*, 98-1 USTC 50415, *1 n.4 (N.D. Fla. 1998) (Personally identifiable information includes a cable customer's billing and payment history).

Based on this decisional law, we conclude that the information sought in the summons, which relates specifically to the Taxpayer's account with the Cable Company, is personally identifiable information and is subject to the CCPA's privacy restrictions. This conclusion, however, does not end the relevant statutory analysis. The CCPA contains an exception relevant to the Service's summons.

2. Exception under 47 U.S.C. § 551(c)(2)(D) to the Prohibition on Disclosure

The CCPA contains an exception in subsection 551(c)(2)(D) to the general nondisclosure rule. Specifically, it provides that a cable operator may disclose personally identifiable information if the disclosure is –

(D) to a government entity as authorized under *chapters* 119, 121, or 206 of *title* 18, except such disclosure shall not include records revealing cable subscriber selection of video programming from a cable operator.
(Emphasis added.)

The cross reference to Title 18, chapter 121 refers to 18 U.S.C. §§ 2701–2711, the Stored Wire and Electronic Communications and Transactional Records Access Statute,² enacted in 1986 to protect stored internet communications. See Orin S. Kerr, *A User's Guide to the Stored Communications Act, and a Legislator's Guide to Amending It*, 72 Geo. Wash. L. Rev. 1208 (2004). Among other things, this statute restricts the ability of providers of electronic communication services, such as internet service providers and telephone companies, to disclose information about their customers and subscribers to government agencies and others. Section 2703(c)(2), however, contains an exception for certain limited disclosures to government agencies made pursuant to an administrative subpoena. Under this subsection, internet service providers and telephone service providers can disclose certain basic information not

¹ For purposes of interpreting the CCPA, the issue of whether personally identifiable information included only information gathered by a cable company through a two-way cable system, such as information about the subscriber's viewing patterns or transactions made over the cable system, has been resolved. In Chief Counsel Advisory 200230034, we rejected the previous position that personally identifiable information includes only information gathered through the cable system, reasoning instead that the concept includes any information a cable company collects that identifies a particular person. IRS CCA 200230034, 2002 WL 1730123, July 26, 2002.

² This statute is also referred to by certain commentators as The Stored Communications Act.

related to the contents of the communications stored on their systems. Specifically, section 2703(c)(2) provides:

A provider of electronic communication service or remote computing service shall disclose to a governmental entity the^B

- (A) name;
- (B) address;
- (C) local and long distance telephone connection records, or records of session times and durations;
- (D) length of service (including start date) and types of service utilized;
- (E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- (F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service *when the governmental entity uses an administrative subpoena authorized by a Federal or State statute.* (Emphasis added.)

Regarding the summons for which you have sought advice, you have informed us that the Cable Company also provides internet and telephone services. If the Cable Company provides the Taxpayer with these services, the Service can use an administrative summons to obtain information about the Taxpayer's source of payment for those services. The second document request contained in the summons seeks that type of information, and because the summons seeks this information concerning "any and all accounts belonging to or associated with" the Taxpayer, the Service need not issue a new summons. The second document request is enforceable pursuant to the exception codified in 18 U.S.C. § 2703(c)(2)(F).

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-4570 if you have any further questions.